

Message

From: Parsons, Tyler [Tyler.Parsons@dnr.ga.gov]
Sent: 9/17/2021 5:33:40 PM
To: Johnson, Bonita [Johnson.Bonita@epa.gov]; Liz Booth [Elizabeth.Booth@dnr.ga.gov]; Danois, Gracy R. [Danois.Gracy@epa.gov]; Able, Tony [Able.Tony@epa.gov]; anna.truszczynski@dnr.ga.gov
CC: Hansel, Joel [Hansel.Joel@epa.gov]
Subject: RE: Response to our September 8th call

Bonita, thanks for the response! I'll let Liz and/or Ania respond with any additional feedback or questions from our management.

Can you send the 106 Grants presentations as PDF attachments, or provide a link where they may be posted online? Susan and I could get those to open in any usable way.

Best,
Tyler

Tyler Parsons
tyler.parsons@dnr.ga.gov
(470) 524-1724 ~ NEW

From: Johnson, Bonita <Johnson.Bonita@epa.gov>
Sent: Friday, September 17, 2021 11:10 AM
To: Booth, Elizabeth <Elizabeth.Booth@dnr.ga.gov>; Danois, Gracy R. <Danois.Gracy@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Truszczynski, Anna <anna.truszczynski@dnr.ga.gov>; Parsons, Tyler <Tyler.Parsons@dnr.ga.gov>
Cc: Hansel, Joel <Hansel.Joel@epa.gov>
Subject: Response to our September 8th call

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.



CWA Section 106
Grants Part One_FINA



CWA Section 106
Grants Part Two FINA

Hi Liz,

I hope that all is well. As mentioned in the email I sent on August 5, waters aren't to be delisted until data shows that water quality has improved or that they were listed in error. The main issue is that a standard was in place when the waters were listed. Due to exceedances of the standard, the waters were listed. Removing them from the list because the standard is no longer in place would suggest that the waters are no longer impaired. A solution that Susan, Tyler, and we agree with is that changing the parameter of the listed waters, as impaired for pathogens, is an appropriate remedy. Once you collect sufficient data which demonstrates that under the new standard the waters should be delisted, you will need to explain in your delisting decision what was done to obtain the data and why it is appropriate to delist based on data for a different indicator (the relationship between fecal and *E. coli* as indicators).

In response to the inquiries made during our call on September 8, we have included relevant citations and information on the 106 calculations below.

Please let me know if additional information is desired.

All the best,

Bonita

1. How to manage a change in standards in the 303(d) Impaired Waters List

GAEPD described the desire to move waters listed for fecal coliform on the 2022 303(d) list (category 5) and waters included in category 4a (TMDL established) to category 3 in the 2024 IR. A “delisting” needs to be for “good cause.” Moving waters to category 3 constitutes delisting waters from the 303(d) list (category 5). The following citations describe good cause conditions under which it is acceptable to delist waters and place them in category 3.

40 CFR § 130.7(6)(iv) requires the following:

Upon request by the Regional Administrator, each State must demonstrate good cause for not including a water or waters on the list [emphasis added]. Good cause includes, but is not limited to, more recent or accurate data; more sophisticated water quality modeling; flaws in the original analysis that led to the water being listed in the categories in §130.7(b)(5); or changes in conditions, e.g., new control equipment, or elimination of discharges.

The EPA has provided information through multiple guidance memorandums since 1994 as to how this requirement should be addressed. In the August 1997 program guidance, the EPA specifically addressed the topic of what to do when a state was in the process of revising its standards:

States may revise their water quality standards to address changes such as a Use Attainability Analysis (as provided by 40 CFR section 131.10), development of a site-specific criterion, or updated science. Several States have asked whether they may exclude waters from the State section 303(d) lists if a water quality standard is in the process of being revised to be less stringent than the standard that is in effect. They are concerned that once the water quality standard has been revised, a waterbody that was water quality-limited under the old water quality standard may not be water quality-limited under the revised water quality standard.

A decision not to list because a water quality standard is in the process of being revised would be inconsistent with the regulations cited above and the Clean Water Act, which require a State to identify “those waters within its boundaries” where controls “are not stringent enough to implement any water quality standard applicable to such waters” (section 303(d)(1)(A) of the Clean Water Act, emphasis added). Therefore, for the 1998 listing cycle, States should include on their section 303(d) lists waters that do not meet an applicable water quality standard at the time of listing, even if the standard is in the process of being revised to be less stringent. If the standard is in fact revised in the future, the water may be removed from the section 303(d) list at that time provided the water no longer meets the listing requirements. States have the discretion, of course, to assign a low priority to those waters where there is a likelihood that they may be removed from the list in the near future.

Information Concerning 2010 Clean Water Act Sections 303(d), 305(b), and 314 Integrated Reporting and Listing Decisions

EPA recommends that States include in their assessment methodologies a description of the rationale to be used in assigning waters to category 3. In particular, EPA regulations require States to provide in their Section 303(d) list submissions a rationale for not using any existing and readily available water quality data and information in developing the list (40 CFR 130.7(b)(6)(iii)). EPA also expects that waters identified as impaired and listed on the 303(d) list in the previous reporting cycle will not be removed from the list and placed into Category 3 in the subsequent listing cycle unless the State can demonstrate good cause for doing so, consistent with EPA regulations (40 CFR § 130.7(b)(6)(iv)). The State should explain why the data and information that formed the basis for the original listing is no longer sufficient for determining that the water is still impaired.

2. How are Section 106 funds allocated to states, territories, and interstate agencies?

Each year the president's budget includes a funding request for the Section 106 program. Congress, when developing the annual budget, uses the president's request as a starting point for determining how much funding to appropriate for Section 106 grants.

Once the annual budget is finalized, EPA calculates Section 106 allotment funds to states, territories, and interstate agencies (not including Monitoring Initiative funds) using an allocation formula that funds "on the basis of the extent of the pollution problem in the state" (CWA section 106(a)(2)). The formula is published in the [Code of Federal Regulations at 40 CFR Part 35.162 \(PDF\)](#) (4 pp, 339 K, [About PDF](#)). Interstate agencies receive 2.6 percent of the overall state and territorial allotment.

If funding remains the same as the previous year, all states will receive their previous year's allotment.

If available funding has increased over previous years, the formula calls for all states to receive:

- A funding floor (i.e., the previous year's allotment) and*
- An adjustment for inflation calculated using the historical consumer price index.*
- Any additional funding is distributed based on the extent of water quality problems in each state or territory (or portion of the state for the interstate allotments), including surface water area, ground water use, water quality impairment, point source pollution, nonpoint source pollution, and population of urbanized areas.*

The formula also establishes a funding ceiling limiting an allotment from increasing more than 150 percent from the previous year.

In years of decreased funding, each allotment is reduced by an equal percentage.

How often are the data in the allotment formula updated?

At a minimum, the data used in the formula must be updated every five years. EPA can update the formula more frequently, if necessary. The data in the formula were last updated in 2016.

The Agency will be updating the data in the variable formula this FY. Two webinars were hosted by ACWA to explain how the formula works. We have attached the slides from the presentations. The first presentation provides a broad overview of the 106 program and the second one goes in-depth on how the variable portion of the allocations are calculated. We hope that these will clarify your questions on the 106 program allocations.